

**BEFORE THE WESTERN WASHINGTON
GROWTH MANAGEMENT HEARINGS BOARD**

LAKE CAVANAUGH IMPROVEMENT
ASSOCIATION and CITIZENS TO SAVE
PILCHUCK CREEK,

Petitioners,

v.

SKAGIT COUNTY,

Respondent.

NO. 04-02-0011

**ORDER ON
DISPOSITIVE MOTION**

I. SUMMARY OF DECISION

This matter comes before the Western Washington Growth Management Hearings Board (Board) on Petition for Review from Lake Cavanaugh Improvement Club and Citizens to Save Pilchuck Creek (Petitioners). Respondent Skagit County and its Board of Commissioners (Respondent) are challenged by Petitioners for failing to comply with the Growth Management Act (GMA) goal and requirements for both conservation of designated Industrial Forest-Natural Resource Lands and for protection of these lands from incompatible uses. In particular, Petitioners pinpoint a feature of the Parks and Recreation Plan (Park Plan) element of the County Comprehensive Plan allowing for the siting of a shooting range on a 400-acre parcel in Industrial Forest-Natural Resource Lands in south central Skagit County.

The portion of the Park Plan element of the County's Comprehensive Plan that allows a large shooting range, with enclosed structures, to be constructed on a 400-acre parcel of property designated as Industrial Forest-Natural Resource Lands in the south central portion of Skagit County in the vicinity of Lake Cavanaugh, a property currently owned by the State of Washington and managed by its Department of Natural Resources, does not meet the mandate in the GMA to conserve forest lands. RCW

36.70A.020(8). The proposed shooting range on designated natural resource lands, as described in the adopted Park Plan, does not comply with the GMA because the large complex of buildings for non-forestry activities would convert those lands from forestry to non-resource uses. Further, the proposed shooting range is an incompatible use in forest resource lands because it would bring a large traffic of recreational shooters into forest lands and divert services such as firefighting from forestry to non-resource uses.

The County's code expressly prohibits enclosed structures associated with outdoor shooting ranges in Industrial Forest Lands. SCC 14.16.410 (5)(k). Therefore, the requirements for internal consistency of local plans, policies, and development regulations are not met where the County's Park Plan designates as an allowable use a large shooting range with associated enclosed structures in Industrial Forest-Natural Resource Lands. RCW 36.70A.070 (preamble).

The Board declines to enter an order of invalidity as a proper cure for the flawed portion of the recreation element of the Skagit County Park Plan.

II. PROCEDURAL HISTORY

The original Petition for Review was filed with this Board on June 4, 2004. A Prehearing Order was issued on June 29, 2004. An amended petition, citing further references to the State's Growth Management Act (GMA), was filed on July 1, 2004. Petitioners filed a Motion to Supplement and additional documents for the case index on July 14, 2004. The County filed no objections to this motion. Petitioners filed a Dispositive Motion on July 16, 2004. Respondent filed a Response to Petitioners' Dispositive Motion on July 29, 2004. A hearing before the full Board on the Dispositive Motion was held on August 5, 2004, at the Skagit County Administration Building complex in Mount Vernon, Washington. At the motions hearing, the

Presiding Officer ruled on Petitioners' Motion to Supplement and allowed Exhibits 301 through 307 to supplement the record. (See Appendix A for a list of those exhibits.)

III. BURDEN OF PROOF

In determining the issues presented in Petitioners' motion, Petitioners carry the burden of proof. Comprehensive Plan amendments, development regulations, and amendments to them are presumed valid upon adoption. RCW 36.70A.320(1). To meet their burden, the Petitioner must show that the challenged adoption is clearly erroneous:

The board shall find compliance unless it determines that the action by the state agency, county, or city is clearly erroneous in view of the entire record before the board and in light of the goals and requirements of this chapter.

RCW 36.70A.320(3).

In order to find Skagit County's action clearly erroneous, the Board must be "left with the firm and definite conviction that a mistake has been made." *Department of Ecology v. PUD1*, 121 Wn.2d 179, 201, 849 P.2d 646 (1993). We review the challenges under the clearly erroneous standard.

IV. THREE ISSUES FOR REVIEW¹

ISSUE 1. Does the Park Plan comply with the Growth Management Act (GMA) and its mandate to conserve forest lands, as construed in prior rulings by the appellate court and by this Board in Evergreen Islands v. Skagit County, et al., Case No. 00-2-0046c, by proposing the use of Industrial Forest-Natural Resource Lands (IF-NRL) for a large, 400-acre shooting range which that involve many permanent

¹ Issues are stated as they were in the Prehearing Order issued on July 9, 2004, not as they are phrased in the Petitioners' Dispositive Motion.

enclosed structures? Does the Park Plan comply with RCWs 36.70A.020(8), .030(8), .040(3), 060(1), .070(1) (preamble), .070(8), and .170?

ISSUE 2. Does the Park Plan, which has been adopted as a functional plan and a part of the Skagit County Comprehensive Plan, meet the internal consistency requirements of the GMA where the Park Plan designates for a large shooting range with enclosed structures lands which the Comprehensive Plan and Land Use Map designate as Industrial Forest and on which the Growth Management Act and implementing development regulations prohibit the siting of shooting ranges involving associated enclosed structures? Does the Park Plan comply with RCWs 36.70A.040(3), .070 (preamble), .070(1), and 070(8), as well as WAC 365-195-300(1) and -500?

ISSUE 3. Where development of a large shooting range with permanent, enclosed structures would frustrate the mandate of the GMA that forest lands be conserved, and would directly flout the ruling by this Board in Evergreen Islands v. Skagit County, et al., Case No. 00-2-0046c, should an order of invalidity be entered against those provisions within the Park Plan that designate Industrial Forest-Natural Resource Lands for location of a shooting range involving many permanent structures? Does this issue comply with RCW 36.70A.020(8) and should RCW 36.70A.302(2)(b) apply?

V. DISCUSSION OF THE ISSUES

Background

In 1996, Skagit County adopted Ordinances 16287 and, subsequently 16291 that designated the subject property as Industrial Forest-Natural Resource Lands. These ordinances also adopted a Natural Resource Lands Map, and limited the scope of recreational uses such as shooting ranges and gun clubs allowed within Industrial

Forest Lands. In 1997, when Skagit County undertook efforts to identify lands useful for recreation and encourage development of certain recreational opportunities, some proposals—including one for the subject state-owned forest land acreage in the Frailey Mountain area, near Lake Cavanaugh—were approved as recommendations in its Parks and Recreation Comprehensive Plan. As part of the Final Environmental Impact Statement (FEIS) for the proposed Park Plan, a schematic drawing of the proposed, fully developed Skagit County Shooting Range was included. (Figure 3, FEIS) Exhibit 303. The recommendations statement for Level 2 recreation areas states, in part:

The need for a shooting range has become apparent because of random shooting in sand and gravel quarries or other unmanaged areas. Because of the concern for safety, shooting in these areas is now restricted. To accommodate the need for a safe and reliable shooting area ... the Frailey Mountain site was chosen ... six separate sites were looked at in detail.

Skagit County Parks and Recreation Plan: Recommendations (May 17, 2004) at 11.

From the record and testimony made at hearing, Skagit County hoped to take ownership of the land as a result of transfer and would then own the shooting range. The County planned to develop an operating agreement for the range with Skagit Sportsmen and Training Association.

In rounds of public discussion and comment about the proposed Park Plan and features of the County's land use plans, some residents and public interest groups in Skagit County viewed certain proposed new uses of designated agricultural and forest lands as incompatible with the County's Comprehensive Plan and the Growth Management Act. Over a period of four years, sundry appeals of features of the County's Comprehensive Plan were made to this Board (*e.g.*, the various cases comprising *Evergreen Island et al v. Skagit County*). One particular GMA appeal was of Skagit County Ordinance 17938, an ordinance permitting a hearing examiner special use of

“shooting clubs (outdoor, no associated enclosed structures)” within the Industrial Forest-Natural Resource Lands (IF-NRL), which became WWGMHB Case No. 00-2-0046, *Evergreen Islands et al v. Skagit County*.

Skagit County amended its code at SCC 14.16.410 in a response to the Board’s directive to remove the uses in natural resource lands that did *not* comply with the Washington State Supreme Court’s opinion in a King County case involving soccer fields in resource lands (142 Wn.2d 543, 14 P.3d 133–[2000]). Resolution R20020130. This County code amendment did not include significant change of the shooting clubs’ code provision, but *instead* provided an elaboration: “Hearing Examiner Special Uses: Shooting clubs (outdoor) with no associated structures except as needed for emergency communications equipment or conversion of resource land allowed.” SCC 14.16.410(5)(k). In a compliance order in *Evergreen Islands et al v. Skagit County*, dated May 14, 2002, this code provision was found to be compliant with the GMA.

Commencing in May 1997 and lasting into 2004, four permits, including a shorelines permit, related to the proposed shooting range were applied for. Skagit County contends one of those was a Special Use Permit that vested on May 22, 1997. A series of appeals, hearing examiner rulings, Land Use Petition Act appeals to a court of general jurisdiction, and Board of Commissioner rulings and overturns occurred. A forestry land designation was contested. Citizens for Pilchuck Creek participated in several of the appeals and made comments, along with members of the Lake Cavanaugh Improvement Association.

On May 17, 2004, the Board of Commissioners adopted a Comprehensive Parks and Recreation Plan for Skagit County through adoption of Ordinance 020040007. Petitioners appealed the May 17, 2004, Ordinance No. 020040007 adoption, focusing on the three issues for review referenced above. In the course of this current appeal,

Skagit County admitted the proposed large shooting range complex is inconsistent with their adopted Comprehensive Plan and development regulations.

Issue No. 1: Does the Respondent's Park Plan comply with the Growth Management Act and its mandate to conserve forest lands by proposing the use of Industrial Forest-Natural Resource Lands (IF-NRL) for a 400-acre shooting range, archery range, enclosed structures, trap field stations, muzzleloader shooting area, law enforcement training space, recreational vehicle parking and camp area, and other associated uses? Does this comport with prior decisions by the Board, particularly in WWGMHB Case 00-2-0046c – Evergreen Islands v. Skagit County, et al., and with decisions by the appellate court for the State of Washington? { Does the Park Plan comply with RCWs 36.70A.020(8), .030(8), .040(3), 060(1), .070(1) (preamble), .070(8), and .170?

The Petitioners argue that the proposed shooting range both converts forest resource lands to non-resource uses and places 400 acres of incompatible uses in the middle of forest resource lands. Petitioners' Dispositive Motion (July 15, 2004). The County concedes that the proposed shooting range conflicts with the GMA goal for conservation of resource lands (RCW 36.70A.020[8]) and with the County's own planning policies. Comments of counsel at the August 5, 2004, Motions Hearing. However, Respondent argues that the permit for the shooting range has vested and that the County must conform its Park Plan to the reality of the vested shooting range permit.

The parties hold different positions regarding any vesting of a permit for the shooting range. A decision on vesting is not within this Board's authority. RCW 36.70A.280(1). The Board must determine whether the challenged Comprehensive Plan amendment complies with the GMA. RCWs 36.70A.280(1) and 36.70A.290(2)

First, the Board considers whether the proposed shooting range converts designated forest resource lands to non-resource uses. The proposed project covers 400 acres of designated forest resource lands. It includes buildings and parking lots. Such use of this designated Industrial Forest Land converts this land to an intense and large-scale recreational use and prevents its use for long-term commercial timber production.

Second, the Board considers whether the proposed shooting range interferes with the continued use of industrial forest lands for commercial forestry purposes. RCW 36.70A.020(8). The proposed large shooting range, as described in Figure 3 of the Parks Plan FEIS, is intensive and large-scale. It lacks compatibility with what has been actively managed and conserved Industrial Forest-Natural Resource Lands in the Lake Cavanaugh area of south central Skagit County.

Despite its refinements over a seven-year period, the Park Plan designation of use of the 400-acre Frailey Mountain parcel for a large shooting range and training facility fails to match the County's restrictions on forest lands conversion and those on siting recreational uses set forth in the Comprehensive Plan policies, particularly policies 5B-5.1 and 5.2. The use at issue here and the development schematic quarrels with the County's code regulations outlining the terms of Hearing Examiner Special Use Permits that prohibit shooting ranges with associated enclosed structures. By proposing an intensive, large-scale shooting range in its Park Plan that does not comply with the County's own compliant development regulations that were designed to assure incompatible uses would not interfere with the conservation of Industrial Forest – Resource Lands, the County fails to conserve productive forest land.

Conclusion: The inclusion of the proposed shooting range in the Parks Element of the County's Comprehensive Plan fails to comply with the GMA goal to conserve

productive forest land, and interferes with the use of adjacent productive forest land for long-term commercial timber production. RCW 36.70A.020(8).

Issue No. 2: Does the Park Plan, which has been adopted as a functional plan and a part of the Skagit County Comprehensive Plan, meet the internal consistency requirements of the GMA where the Park Plan designates for a large shooting range with enclosed structures lands which the Comprehensive Plan and Land Use Map designate as Industrial Forest and on which the Growth Management Act and implementing development regulations prohibit the siting of shooting ranges involving associated enclosed structures? Does the Park Plan comply with RCWs 36.70A.040(3), .070 (preamble), .070(1), and 070(8), as well as WAC 365-195-300(1) and -500?

Petitioners argue that the inclusion of the Frailey Mountain shooting range in the Parks Element of the County's Comprehensive Plan, that would permanently convert hundreds of acres of designated industrial forest lands, directly conflicts with the County's Comprehensive Plan policies and development regulations. Further, Petitioners argue that since the Park Plan is a functional element of the County's Comprehensive Plan, it should be consistent with the Comprehensive Plan. Petitioners' Dispositive Motion at 19-21.

The County asserts that the County's Comprehensive Plan policies provide special deference to potential land use conflicts between forest management activities and non-forestry activities. The County cites Comprehensive Plan Policies 5B-3.2, 5.B-4.5, 5.B-4.12, and 5.B-5.2 to support its argument. The County also argues that shooting ranges are allowed by the County's development regulations (SCC.14.16.410). Skagit County's Response to Petitioners' Dispositive Motion at 4 and 5.

The County's Parks Plan is an element of the County's Comprehensive Plan. Exhibit 134². RCW 35.70A.070 states, "The plan should be an internally consistent document and all elements shall be consistent with the future land use map." To be operative, therefore, the Park Plan must be consistent with the rest of the County's Comprehensive Plan policies.

The Park Plan proposes a shooting/training range at the Frailey Mountain site of approximately 400 acres to include an indoor facility with a pistol archery range and classrooms. Exhibit 306 at 11-17. This site is located both on and nearby designated Industrial Forest Natural Resource Lands. Exhibits 302 and 303. In the discussion of Issue No. 1 above, the Board notes that a shooting range of the size and scale of the one proposed in the Parks Plan converts Industrial Forest-Natural Resource Land to a recreational use and interferes with the management of adjacent lands for long-term commercial use. For these reasons, the use of the Frailey Mountain site also is inconsistent with Policy 5B-5.1 that directs that Industrial Forest lands be used for commercial forestry and ancillary mining purposes with limited residential development, and Policy 5B-5.2 that declares that recreational opportunities on Industrial Forest land shall be encouraged where they do *not* conflict with the commercial natural resource management. Exhibit 307 at 5-17.

While the County's Response Brief contends that the Comprehensive Plan policies support its position that the conversion of Industrial Forest lands to this recreational use is allowed, the County admitted at argument that the shooting range was not consistent with its other Comprehensive Plan policies or with its zoning regulations. Furthermore, Policy 5B-4.5, which the County cites as support for the proposed shooting range, states that the zoning ordinance shall only consider recreational

² Exhibit 1 referenced and attached to Ordinance 020040007.

activities that are compatible with resource management under Special Uses or do not adversely affect the intent of forest resource policies. Exhibit 307 at 5-15. The County's development regulations, that this Board has found to be compliant with the GMA, only allow shooting clubs (outdoor) with no associated enclosed structures except as needed for emergency communications equipment or conversion of resource land allowed as a Hearings Examiner Special Use. This regulation is consistent with Comprehensive Plan policies discussed above and clarifies that shooting clubs are to be outdoors with no enclosed structures except in very limited circumstances. However, the proposed shooting range in the Park Plan is not consistent with Skagit County's development regulations (SCC 14.16.410[k]) and Comprehensive Plan policies, particularly Policies 5B – 5.1 and 5B – 5.2. Exhibit 307.

This Board has held:

Rather, in reviewing the procedural criteria found in WAC 365-195, we are persuaded that the consistency required between DRs and the CP is adequately defined in WAC 365-195-210 as meaning that “no feature of a plan or regulation is incompatible with any other feature of a plan or regulation.”

WWGMHB Case No. 98-2-0006, *Citizens for Mount Vernon* (Final Decision and Order, July 23, 1998) at 11.

In this case, a feature of the Park Plan, an element of the County's Comprehensive Plan, is not consistent with the County's policies for assuring that incompatible uses will not interfere with the conservation of Industrial Forest-Natural Resource Lands and the County's development regulations regarding the allowance of shooting clubs in industrial forest lands.

Conclusion: The Park Plan that proposes a shooting club with extensive covered structures is not consistent with the County's comprehensive plan policies and land use map and development regulations as required by RCW 36.70A.070 (preamble).

Issue No. 3: *If it is determined that such a siting and use would frustrate the forest lands conservation mandate of the GMA at RCW 36.70A.020(8), and countermand this Board's order and the court's ruling in WWGMHB Case. 00-2-0046c, should an order of invalidity be entered against the pertinent provisions of the Park Plan and Skagit County Comprehensive Plan? Should RCW 36.70A.302(2)(b) apply?*

Petitioners seek an order of invalidity. Petitioners argue that invalidity should be imposed to ensure that state agencies that have been asked to grant funds to the County to support this project (IAC) and to transfer property rights to the County (DNR) will refuse the County's request. However, the purpose of invalidity is to prevent the vesting of development permits that might interfere with the County's compliance with GMA requirements. RCW 36.70A.302(1) (b). Here, vesting is not at issue. If the proposed use as a large shooting range is legally determined to be vested, it would have vested prior to this Board's decision. If the proposed use is not vested, the eventual property use must comply with the adopted Skagit County zoning code and development regulations that do not allow for shooting ranges with permanent structures.

Conclusion: A finding of invalidity is not necessary to prevent the vesting of development permits that might interfere with the County's compliance with GMA requirements.

VI. FINDINGS OF FACT

1. Skagit County, located west of the crest of the Cascade Mountains, plans for land use and growth management under terms of the GMA.
2. Petitioners are associations and citizens groups lawfully organized who participated in the County's hearings and invitations for comment on the Park Plan.

3. The proposed large shooting range, as described in Figure 3 of the Parks Plan FEIS, is intensive and large-scale. It lacks compatibility with what has been actively managed and conserved Industrial Forest-Natural Resource Lands in the Lake Cavanaugh area of south central Skagit County.

4. Here the integrity of long-term commercial use of adjacent forested lands is compromised by the proposed large-scale shooting range; training center; and major camper, truck, and car parking accommodations. The Skagit County Park Plan actually relies on a conversion from forest resource land to recreation use at the Frailey Mountain and is incompatible with those forest resource land designations and uses.

5. Despite its refinements over a seven-year period, the Park Plan designation of use of the 400-acre Frailey Mountain parcel for a large shooting range and training facility fails to match the County's restrictions on forest lands conversion and those on siting recreational uses set forth in the Comprehensive Plan policies, particularly Policies 5B-5.1 and 5.2. The designation at issue here and the development schematic quarrels with the County's code regulations outlining the terms of Hearing Examiner Special Use Permits; terms that prohibit shooting ranges with associated enclosed structures. SCC 14.16.410 (5)(k).

6. The subject Park Plan is a functional plan and an integral part of the Skagit County Comprehensive Plan.

7. While the County asserts the May 1997 Special Use Permit for a large shooting range it issued for itself rises to the level of a vested permit, the Board does not here make such a determination of fact, and need not do so to rule on essential aspects of this appeal and dispositive motion.

VII. CONCLUSIONS OF LAW

1. The Board has jurisdiction over these parties and this matter. Skagit County is required to plan under terms of the GMA at RCW 36.70A.040.
2. The Petitioners have standing in the case.
3. The proposed use of the subject 400-acre parcel is not consistent with the mandate in the GMA to conserve forest lands and avoid incompatible uses and previous holdings of this Board. RCW 37.70A.020(8), .030(8) and *Evergreen Islands v. Skagit County.*, WWGMHB Case # 00-2-0046c (Final Decision and Order, February 6, 2001).
4. Respondent County did not adopt all features of its Park Plan Element of its Comprehensive Plan and development regulations in a manner that clearly avoided impacts on industrial forest lands and surrounding resources in south central Skagit County near Frailey Mountain and Lake Cavanaugh. RCW 36.70A.020(8), RCW 36.70A.030(8), and holdings in *Evergreen Islands v. Skagit County et al.*
5. The Park Plan element designating a large shooting range with enclosed structures and other associated facilities for the 400-acre Frailey Mountain parcel is internally inconsistent with the County's adopted Comprehensive Plan policies, land use map, and implementing development regulations at SCC 14.16. This circumstance does not meet the consistency requirement of RCW 36.70A.070 (preamble).
6. The designated use of the 400-acre Frailey Mountain parcel in the Park Plan is incompatible with adjacent industrial forest lands and does not comply with RCW 36.70A.020(8) and RCW 36.70A.030(8).

VII. ORDER

The motion brought by Petitioners to dispose of the case on grounds of the Skagit County's Park Plan's non-compliance with prior rulings of the Board and the Courts; unwarranted conversion of designated industrial forest lands; introduction of an incompatible use adjacent to industrial forest lands; lack of internal inconsistency with the County's adopted Comprehensive Plan and policies, land use designations map, and development regulations; and non-compliance with policies of the GMA at RCW 36.70A.020(8), .030(8), and .070 (preamble) is hereby granted.

The County must bring, within 180 days, its Park Plan Element of its Comprehensive Plan into compliance with its Comprehensive Plan policies, development regulations, and the GMA. The Board establishes the following compliance schedule:

COMPLIANCE SCHEDULE

Compliance Deadline	March 19, 2005
County's Statement of Actions Taken	April 7, 2005
Optional:	
• Petitioners' Objections to a Finding of Compliance	April 28, 2005
• County's Response	May 20, 2005
• Petitioners' Reply (Optional)	May 27, 2005
Compliance Hearing	June 3, 2005 9 a.m. Location to be determined

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This is a final decision for purposes of appeal. RCW 36.70A.300 (5).

So ORDERED this 21st day of September 2004.

WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

Holly Gadbow, Board Member

Gayle Rothrock, Board Member

Unavailable for signature
Margery Hite, Board Member

ADDITIONS TO THE INDEX TO THE RECORD OF THE LOCAL JURISDICTION

WESTERN WASHINGTON GROWTH MANAGEMENT HEARING BOARD

CASE NAME: Lake Cavanaugh Improvement Assn. et al. v. Skagit County

CASE NO. 04-2-0011

SUBMITTED By: Petitioners Lake Cavanaugh Improvement Assn, et al.

Exhibit Number	AID *	Title/Type of Document	Description
301		Ordinance 1628.7 (excerpts)	An ordinance adopting resource lands designations
302		Ordinance 16291 (excerpts)	An ordinance amending Ordinance 16287 and adopting resource lands designations
303		Natural Resource Lands Map for Frailey Mountain Area	Designation of site of the shooting range proposed within the Park Plan as Industrial Forest - Natural Resource Lands
304		Ordinance 17938	An ordinance amending the Comprehensive Plan and adopting a Unified Development Code
305		Resolution R20020130 (excerpts)	An ordinance responding GMHB findings of non-compliance
306		Comprehensive Parks and Recreation Plan (excerpts)	Portions of the Park Plan under appeal
307		Comprehensive Plan (excerpts)	Portions of the Comprehensive Plan relevant to forest lands

* A = Admitted
D = Denied
(Board Use Only)

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